

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JAMES ORTIZ,)
)
Petitioner,)
)
v.) No. CIV-06-22-L
)
ERIC FRANKLIN, Warden,)
)
Respondent.)

O R D E R

This matter is before the court for review of the Report and Recommendation entered by the Honorable Bana Roberts on January 20, 2006, in which she recommended the Petition for Writ of Habeas Corpus be dismissed without prejudice. Petitioner is challenging convictions obtained in the District Court of Pittsburg County, Oklahoma, which is located in the Eastern District of Oklahoma. As petitioner is incarcerated at a correctional facility in this district, both federal districts have jurisdiction over this action. See 28 U.S.C. § 2241(d). This court, however, has discretion to transfer the petition to the district in which the conviction was obtained. The Report nonetheless recommended dismissing the action as time-barred without prejudice to its refiling in the Eastern District of Oklahoma for a determination of whether petitioner can establish he is entitled to equitable tolling. In his timely filed objections, petitioner argues he is entitled to equitable tolling as he is actually innocent of the crimes charged.

Given petitioner's objections, the court finds justice would be better served by transferring this action in the first instance rather than dismissing it so that petitioner could refile in the appropriate jurisdiction. The court therefore orders this matter transferred to the United States District Court for the Eastern District of Oklahoma.

It is so ordered this 8th day of February, 2006.

Tim Leonard
TIM LEONARD
United States District Judge